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KEVIN SHEAHAN  
4190 DANCEGLEN DRIVE  
COLORADO SPRINGS, CO 80906

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**FEB 09 2004**

**OFFICE OF PETITIONS**

In re Application of

Sheahan, et al.

Application No. 10/643,142

Filed: August 18, 2003

Attorney Docket No

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:  
: DECISION ON PETITION  
:

This is a decision on the petition under 37 CFR 1.10 filed, October 20, 2003.

**The decision mailed January 21, 2004, is vacated as the decision was sent to an incorrect address and would not have been received by the petitioner.**

The petition is **dismissed**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition" under 37 CFR 1.10."

The instant petition was filed to correct what petitioner believed was an incorrect filing date accorded the above-cited application. Petitioner maintains that the correct filing date for the application should be August 12, 2003, not the currently accorded date of August 18, 2003. In support thereof, petitioner filed a copy of the Express Mail label EV89259475US showing a "date-in" of August 18, 2003.

Section 1.10(a) of the Title 37 of the Code of Federal Regulations indicates that correspondence received by the Patent and Trademark Office that was delivered by Express Mail will be considered filed in the Office on the date of deposit with the United States Postal Service. Where there is a discrepancy between the date of deposit as shown on the Express Mail label and the filing date accorded the correspondence by the Office, 37 CFR 1.10(c) provides that an applicant may petition to have the Commissioner accord the correspondence a filing date as of the "date in" on Express Mail label. In accordance with 37 CFR 1.10(c), a successful petition must:

(1) . . . be filed promptly after the person becomes aware that the Office has accorded

or will accord a filing date other than the USPS deposit date;

2) [provide] the number on the Express Mail mailing label was placed on a paper(s) or fee(s) that constituted the correspondence prior to the original mailing by Express Mail; and

(3) . . . include a true copy of the Express Mail mailing label showing the date-in and of any other official notation by the USPS relied upon to show the date of deposit.

The instant petition does not satisfy the requirements of item (2) above.

Relative to item (2), no paper was found among the application or petition papers that provided the number of the Express Mail label that constituted the correspondence prior to the original mailing. Petitioner must establish that the Express Mail label number EV286259475US was on the application transmittal form, cover sheet, or other paper allegedly filed with the original application papers on August 12, 2003. The space provided for the Express Mail number on the application transmittal form filed with the application papers was blank. In order to get the filing date of August 12, 2003, petitioner must provide a paper filed with the original application papers that cited the Express Mail label EV28625975US.

Further correspondence with respect to this matter should be addressed as follows:

By mail:                      Mail Stop Petitions  
                                    Commissioner for Patents  
                                    Box 1450  
                                    Alexandria, VA 22313-1450

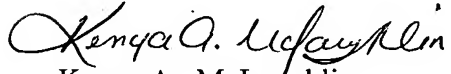
By facsimile:              (703) 872-9306  
                                    Attn: Office of Petitions

By hand:                    Office of Petitions  
                                    2201 South Clark Place  
                                    Crystal Plaza 4, Suite 3C23  
                                    Arlington, VA 22202

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Telephone inquiries concerning this decision should be directed to the undersigned at (703) 305-0010.

  
Kenya A. McLaughlin  
Petitions Attorney  
Office of Petitions